

## ENVIRONMENTAL PROTECTION COMMISSION[567]

### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 459.103 and 459A.104, the Environmental Protection Commission proposes to amend Chapter 65, "Animal Feeding Operations," Iowa Administrative Code.

The proposed amendments are corrections to definitions and requirements related to animal feeding operations that are needed to make Chapter 65 consistent with statutory amendments adopted during the 2008 legislative session. Additional changes are proposed to bring administrative rules into compliance with federal regulations related to the NPDES permit program and to address outdated references.

Any interested person may make written suggestions or comments on the proposed amendments on or before March 6, 2009. Written comments should be directed to Gene Tinker, Iowa Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-8895; E-mail [gene.tinker@dnr.iowa.gov](mailto:gene.tinker@dnr.iowa.gov).

Also, there will be public hearings as follows, at which time persons may present their views either orally or in writing:

March 3, 2009	7 p.m.	Iowa Lakes Community College Gateway North, Room 108B 1900 North Grand Avenue Spencer
March 4, 2009	9 a.m.	Department of Natural Resources Field Office #4, Conference Room 1401 Sunnyside Lane Atlantic
March 4, 2009	3 p.m.	Kirkwood Center for Continuing Education 7725 Kirkwood Blvd., Room 123 Cedar Rapids
March 5, 2009	2 p.m.	Wallace State Office Building Fifth Floor Conference Room 502 E. 9th Street Des Moines

At the hearings, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code sections 459.103, 459.312, 459.314, 459A.104, 459A.208 and 459A.303 and 2008 Iowa Acts, chapter 1191, sections 143 through 148.

The following amendments are proposed.

ITEM 1. Amend rule ~~567—65.1(455B)~~, definition of “Animal feeding operation,” as follows:

“*Animal feeding operation*” means a lot, yard, corral, building, or other area in which animals are confined and fed and maintained for 45 days or more in any 12-month period, and all structures used for the storage of manure from animals in the operation. ~~Am~~ Except as required for an NPDES permit required pursuant to the federal Water Pollution Control Act, 33 U.S.C. Chapter 26, as amended, an animal feeding operation does not include a livestock market. Open feedlots and confinement feeding operations are considered to be separate animal feeding operations.

1. and 2. No change.

ITEM 2. Adopt the following new definition in rule ~~567—65.1(455B)~~:

“*NPDES permit*” means a written permit of the department, pursuant to the National Pollutant Discharge Elimination System (NPDES) program, to authorize and regulate the operation of a CAFO. “CAFO” means the same as defined in ~~567—65.100(455B)~~.

ITEM 3. Amend subparagraph ~~65.3(3)“g”~~(1) as follows:

(1) The manure is land-applied by injection or incorporation on the same date as the manure was land-applied. For purposes of the NPDES permit program if applicable, the person must also demonstrate that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent to or better than the reductions that would be achieved by the 200- or 800-foot setbacks.

ITEM 4. Amend paragraph ~~65.17(6)“b”~~ as follows:

b. Crop schedule. Crop schedules shall include the name and total acres of the planned crop on a field-by-field or farm-by-farm basis where manure application will be made. A map may be used to indicate crop schedules by field or farm. The planned crop schedule shall name the crop(s) planned to be grown for the length of the crop rotation beginning with the crop planned or actually grown during the year this plan is submitted or the first year manure will be applied. ~~The confinement feeding operation owner shall not be penalized for exceeding the nitrogen or phosphorus application rate for an unplanned crop, if crop schedules are altered because of weather, farm program changes, market factor changes, or other unforeseeable circumstances.~~

ITEM 5. Amend rule ~~567—65.100(455B,459,459A)~~, definitions of “Animal feeding operation” or “AFO,” “Animal unit capacity” and “Production area,” as follows:

“*Animal feeding operation*” or “AFO” means a lot, yard, corral, building, or other area in which animals are confined and fed and maintained for 45 days or more in any 12-month period, and all structures used for the storage of manure from animals in the operation. ~~Am~~ Except as required for an NPDES permit required pursuant to the federal Water Pollution Control Act, 33 U.S.C. Chapter 26, as amended, an animal feeding operation does not include a livestock market.

~~Pursuant to federal regulations, a livestock market could satisfy the definitions of an AFO and a CAFO and thus be subject to NPDES permit requirements. In order to implement the federal NPDES permit program, the commission must adopt rules which are no less stringent than federal regulations. Therefore, for the purposes of the NPDES permit program, an AFO can include a livestock market.~~

“*Animal unit capacity*” means a measurement used to determine the maximum number of animal units that may be maintained as part of an open feedlot operation. Only for purposes of determining whether an open feedlot operation must obtain an operating permit, the animal unit capacity of the animal feeding operation shall include the animal unit capacities of both the open feedlot operation and the confinement feeding operation if all of the following occur:

1. The animals in the open feedlot operation and the confinement feeding operation are all in the same category of animals as used in the definitions of “large CAFO” and “medium CAFO” in 40 CFR Part 122.

2. The closest open feedlot operation structure is separated by less than 1,250 feet from the

closest confinement feeding operation structure.

3. The open feedlot operation and the confinement feeding operation are under common ownership or management.

*“Production area”* means that part of an AFO that includes the area in which animals are confined, the manure storage area, the raw materials storage area, egg washing and egg processing facilities, and the waste containment areas. The area in which animals are confined includes, but is not limited to, open lots, housed lots, feedlots, stall barns, free stall barns, milk rooms, milking centers, cow yards, barnyards, medication pens, walkers, animal walkways, confinement houses, and stables. The manure storage area includes, but is not limited to, lagoons, solids settling facilities, settled open feedlot effluent basins, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes, but is not limited to, feed silos, silage bunkers, and bedding materials. The waste containment area includes, but is not limited to, settling basins and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any area used in the storage, handling, treatment, or disposal of mortalities.

ITEM 6. Amend subparagraph **65.101(6)“b”(1)** as follows:

(1) The manure is land-applied by injection or incorporation on the same date as the manure was land-applied. For purposes of the NPDES permit program if applicable, the person must also demonstrate that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent to or better than the reductions that would be achieved by the 200- or 800-foot setbacks.

ITEM 7. Amend subrule 65.104(7) as follows:

**65.104(7)** *Application forms and requirements.* An application for an NPDES permit shall be made on a form provided by the department. The application shall be complete and shall contain information required by the department. Applications ~~submitted after September 30, 2006,~~ shall include a nutrient management plan as required in rule 65.112(459A). Applications involving AT systems shall include results of predictive computer modeling as required by 65.110(6)“a.” The application shall be signed by the person who is legally responsible for the animal feeding operation and its associated manure or process wastewater control system.

ITEM 8. Amend paragraph **65.105(3)“a”** as follows:

a. ~~For an open feedlot operation submitting an application for a construction permit on or after September 30, 2006, a~~ A nutrient management plan as provided in rule 65.112(459A).

ITEM 9. Amend subrule 65.112(1) as follows:

**65.112(1)** The owner of an open feedlot operation which has an animal unit capacity of 1,000 animal units or more or which is required to be issued an NPDES permit shall develop and implement a nutrient management plan meeting the requirements of this rule ~~by December 31, 2006.~~ The owner of an open feedlot operation that seeks to obtain or is required to be issued an NPDES permit after December 31, 2006, shall develop and implement a nutrient management plan meeting the requirements of this rule no later than the date on which the NPDES permit becomes effective. For the purpose of this rule, requirements pertaining to open feedlot effluent also apply to settled open feedlot effluent and settleable solids.

ITEM 10. Amend subrule 65.112(2) as follows:

**65.112(2)** Not more than one open feedlot operation shall be covered by a single nutrient management plan. For an open feedlot operation that is required to have an NPDES permit and the animal feeding operation includes an open feedlot operation and a confinement feeding operation, the nutrient management plan must include both the open feedlot operation and the confinement feeding operation if the confinement feeding operation does not have a manure management plan. If the confinement feeding operation portion of the animal feeding operation does have a manure management plan as required in 65.16(455B) and 65.17(455B), the confinement feeding operation portion shall not be included in the nutrient management plan; however, in that event, the manure

management plan must be amended to include the information specified in 65.112(8)“e.”

ITEM 11. Amend subparagraph **65.112(8)“a”(1)** as follows:

(1) A phosphorus index of each field in the nutrient management plan, as ~~defined~~ required in 65.17(17)“~~a~~”, including the factors used in the calculation. A copy of the NRCS phosphorus index detailed report shall satisfy the requirement to include the factors used in the calculation. In addition, total phosphorus (as P<sub>2</sub>O<sub>5</sub>) available to be applied from the open feedlot operation shall be included.

ITEM 12. Renumber subparagraph **65.112(8)“e”(7)** as **65.112(8)“e”(10)**.

ITEM 13. Adopt the following new subparagraphs **65.112(8)“e”(7)**, **(8)** and **(9)**:

(7) Appropriate site-specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States.

(8) Protocols for appropriate testing of manure, process wastewater, open feedlot effluent and soil.

(9) Protocols to land-apply manure, process wastewater or open feedlot effluent in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, process wastewater or open feedlot effluent.